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September 15, 1993

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SEP 15 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

John W. Hunter

By: 

Stephen T. Yelverton

Enclosure

B: CATON.105

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SEP 15 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: Administrative Law Judge
Walter C. Miller

MOTION TO ENLARGE ISSUES AGAINST RINGER

Respectfully submitted,

MCHAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
Stephen T. Yelverton
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September 15, 1993

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MOTION TO ENLARGE ISSUES AGAINST RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against David A. Ringer ("Ringer"). The motion is based on the August 31, 1993, hearing testimony of Ringer and is filed within fifteen (15) days of the hearing. Thus, it is timely filed. In support of its motion to enlarge the issues, ORA submits the following comments.

In his application and integration statement, Ringer claimed numerous past residences to be within the 60 dBu contour of his proposed station. However, in an amendment, filed July 16, 1993, Ringer conceded that all but two of those residences were not within the proposed contour. According to Ringer in a declaration, dated July 16, 1993, he discovered the errors by reviewing the joint coverage exhibit. Ringer made no mention of the two past residences claimed in his hearing exhibit.

Ringer represented in his hearing exhibit that he had lived within the 60 dBu contour of his proposed station at the following locations:

1000 Urlin Avenue, # 1017
Columbus, Ohio 43212

600 E. Town St.
Columbus, Ohio

(Ringer Ex. 2, p. 1).

At the August 31, 1993, hearing, Ringer again represented that these past residences are within the 60 dBu contour of his proposed station. This determination was based upon Ringer looking at an engineering map which contained the proposed contour. He expressed no uncertainty that these past residences are within the proposed contour. According to Ringer, if the engineer drew the contour line correctly, his past residences are within that contour (Tr. 138-140).

At the conclusion of Ringer's testimony, one of the competing applicants offered a rebuttal exhibit which shows that these residences are at least a kilometer outside the proposed contour (Davis Ex. 5; Tr. 279-281). Ringer conceded shortly thereafter that his hearing exhibit was incorrect in this

respect. His concession resulted from a quick call to the engineer who had prepared the joint coverage exhibit (Tr. 276-277).

Accordingly, a substantial and material question of fact is raised as to whether Ringer made knowing and intentional misrepresentations in his hearing exhibit as to his past residences within the 60 dBu contour of his proposed station. Ringer admitted that he reviewed the joint coverage map prior to the hearing to determine whether his past residences are within the proposed contour. Thus, his misrepresentations are knowing.

An intent to deceive the Commission can be readily inferred. Two of the competing applicants made no claim for past residence within their proposed contours (ASF Ex. 3; Wilburn Ex. 2; Tr. 61). Thus, if Ringer could obtain some comparative credit for past residence, he would have a decisively significant preference over those two applicants. See, Frank Digesu, 7 FCC Rcd 5459, 5460-5461, paras. 6-22 (1992), a misrepresentation issue was specified where an applicant claimed comparative credit as to matters which she knew or should have known were incorrect. There, an exaggerated claim for past broadcast experience was in issue.

Even if Ringer did not have a conscious intent to deceive, specification of an issue is nevertheless warranted. The Commission held in Golden Broadcasting Systems, Inc., 68 FCC2d 1099, 1106 (1978) that gross negligence and wanton carelessness are the functional equivalent to an affirmative and deliberate intent to deceive. There is no question that, at the very least, Ringer's actions in preparing and reviewing his hearing exhibit constitute gross negligence and wanton carelessness. His claimed past residences are not even close to the service contour.

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether David A. Ringer knowingly and intentionally misrepresented, as within his proposed service contour, his past local residences in his hearing exhibit and his hearing testimony and, if so, whether he possesses the requisite character and basic qualifications to

be a Commission licensee, and thus whether his application should be granted?

If this issue is specified, ORA requests that Ringer produce all documents related to his reviewing any coverage maps as to his past local residences. This would include notes or memos relating to Ringer's past local residences, and records of telephone conversations and facsimile transmissions relating to this matter.

WHEREFORE, in view of the foregoing, ORA requests that the foregoing issue be specified against Ringer.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

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September 15, 1993

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 15th day of September, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion to Enlarge Issues Against Ringer" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
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Washington, D.C. 20554

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*Hand Delivery